

Plum Creek Concept Plan

Legal Standards

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Statutory Standards

1. 12 M.R.S.A. § 685-A (8-A) - criteria for adoption or amendment of district boundaries

Under Section 685-A (8-A) of Title 12 of the Maine Revised Statutes, a landowner's petition to rezone or "redistrict" must meet the following statutory redistricting criteria:

8-A. Criteria for adoption or amendment of land use district boundaries. A land use district boundary may not be adopted or amended unless there is substantial evidence that:

A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter [chapter 206-A, the Maine Land Use Regulation Law]; and

B. The proposed land use district satisfies a demonstrated need in the community or area and has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

A. 12 M.R.S.A. § 685-A (8-A)(A) - consistency with district boundary standards, Comprehensive Land Use Plan, and purposes and intent of LURC Statute

A. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter [chapter 206-A, the Maine Land Use Regulation Law];

(1). Consistent with the standards for district boundaries in effect at the time

The criterion that the proposed land use district is consistent with the standards for district boundaries in effect at the time requires that any land for which a rezoning petition is submitted conform to the description of the proposed subdistrict. For example, land proposed to be rezoned to the P-SL1 subdistrict would need to conform to the description of such subdistrict as set forth in Section 10.23,L,2 of the Commission's Rules and Standards (i.e. be within 250 feet of the normal high water mark of tidal waters and certain flowing waters). The description of the Resource Plan Protection (P-RP) Subdistrict refers to areas where the Commission has approved a Resource Plan (of which concept plans are a subset) in accordance with the review criteria for the same. Thus, the Commission's adoption of the P-RP subdistrict automatically results in the Plan Area being consistent with the standards for district boundaries. The Plan's conformance with all of the review criteria are set forth in the other sections of this document.

(2). Consistent with LURC's Comprehensive Land Use Plan

Please refer to Sections 1.A.(3)., 1.B.(3)., 3.F, 4.D., and 4.F. of this document, and the cover letter attachment entitled "The Plum Creek Concept Plan in Perspective" in the front of the Rezoning Petition, all of which demonstrate how the Plan is consistent with the Comprehensive Land Use Plan.

(3). Consistent with the purpose, intent and provisions of LURC Statute.

The "purpose, intent and provisions" of the LURC statutory framework are set forth in 12 M.R.S.A. § 681, as follows:

The Legislature finds that it is desirable to extend principles of sound planning, zoning and subdivision control to the unorganized and deorganized townships of the State: To preserve public health, safety and general welfare; to prevent inappropriate residential, recreational, commercial and industrial uses detrimental to the proper use or value of these areas; to prevent the intermixing of incompatible industrial, commercial, residential and recreational activities; to provide for appropriate residential, recreational, commercial and industrial uses; to prevent the development in these areas of substandard structures or structures located unduly proximate to waters or roads; to prevent the despoliation, pollution and inappropriate use of the water in these areas; and to preserve ecological and natural values.

In addition, the Legislature declares it to be in the public interest, for the public benefit and for the good order of the people of this State, to encourage the well planned and well managed multiple use of land and resources and to encourage the appropriate use of these lands by the residents of Maine and visitors, in pursuit of outdoor recreation activities, including, but not limited to, hunting, fishing, boating, hiking and camping.

The "purpose, intent and provisions" of the LURC statutory framework are fully addressed by the Plan. "Sound planning" is the cornerstone of the Plan. As a regional plan that integrates a working forest, outdoor recreation activities, residences, tourism, and resource conservation, while guiding reasonable levels of development to the most appropriate areas, it represents "well planned and well managed multiple uses of land and resources." It encourages "appropriate use" of the land by Maine residents and visitors in pursuit of outdoor recreation activities, by creating or formalizing multi-use trail systems and guaranteeing public access over large tracts of protected land. It represents "smart growth," preventing random sprawl and uncoordinated development. It also provides for a range of appropriately placed zones for "residential, recreational, commercial and industrial uses," accommodating residential development, recreational opportunities (hiking, bicycling, Nordic skiing and snowmobiling), two resorts, workforce housing, and a commercial/industrial area.

The following sound planning principles underpin Plum Creek's approach to developing the Plan:

- Ensure consistency with LURC's CLUP¹ by:
 - creating new zoning in Plum Creek's Moosehead Region ownership, using the "Concept Plan" approach²;
 - maintaining historic public access to Great Ponds;
 - conserving land with high resource or remoteness values;
 - protecting and managing the forest for wood and fiber production;
 - following LURC's Wildlands Lake Assessment guidelines;
 - guiding new development to areas appropriate for such development; and
 - concentrating most development in areas proximate to population centers and close to major roads and utility services.³
- Ensure that the proposed new development fits with existing conditions, the extent of existing development, the demand for new development, the need for new jobs, and the capacity of resources to accept new development.
- Plan for expanded traditional recreation, continued public access, and the need for interconnecting, expanded trail systems by providing 144 miles of trails.
- Avoid new development on any ponds or lakes that are undeveloped (with the exception of Burnham Pond, which is appropriate for development).
- Recognize the need to retain large, un-fragmented areas of undeveloped land that help conserve habitat for multiple species.
- Follow LURC's "location of development" guidelines when siting new development.
- Enhance the level of protection afforded areas that are least appropriate for development.
- Establish, through the Concept Plan process, conservation of approximately 88% of the Plan Area shoreland owned by Plum Creek.
- Establish a perpetual working forest conservation easement over 61,000 acres of land that will connect to other large tracts of conserved land from Moosehead Lake to Baxter State Park.
- Provide The Nature Conservancy a 5-year option to purchase a working forest conservation easement over 269,000 contiguous acres and acquire in fee 27,000 additional acres, both of which would complement conservation initiatives on surrounding forest lands.

¹ This also demonstrates the Plum Creek Plan's consistency with the second of the four major principles that guide LURC's evaluation of major rezoning proposals: "that the rezoning should be consistent with other goals and policies of the Comprehensive Land Use Plan." CLUP, Chap. 1, p. 122.

² This is the approach taken by LURC to provide for more efficient and effective management of single or multiple protection and management subdistricts in LURC's Rules, Chap. 10, Sec. 10.23, H.

³ This also demonstrates the Plum Creek Plan's consistency with the first of the four major principles that guide LURC's evaluation of major rezoning proposals: "that most future development should take place within or near compatible developed areas, particularly near towns and communities." CLUP, Chap. 1, p. 122.

B. 12 M.R.S.A. § 685-A(8-A)(B) - proposed district meets demonstrated need and has no undue adverse impact, or is more appropriate for existing uses/resources

B. The proposed land use district satisfies a demonstrated need in the community or area and has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

(1). Satisfies a demonstrated need in the community or area.

Please refer to the Sections 1.B.(3), 4.D., and 4.F of this document, Sections 13, 15, and 17 of the Petition for Rezoning, the report entitled *Estimated Economic Impacts of Implementing the Proposed 2006 Plum Creek Rezoning Plan in the Moosehead Lake Area* located in Appendix A of the Plan, and the report entitled *Plum Creek Rezoning Proposal Infrastructure and Community Impact Analysis* located in Appendix B of the Plan, all of which demonstrate how the Plan satisfies a demonstrated need in the region.

(2). No undue adverse impact on existing uses or resources.

The criterion of no undue adverse impact is addressed in the discussions relating to scenic impact, wildlife, and shoreland criteria in Section 3.A., the discussion of how the Plan is at least as protective as existing zoning in Section 4.D., and the discussion on the balance between development and conservation in Section 4.F.

(3). New designation is more appropriate for the protection and management of existing uses and resources within the affected area.

Most of the shoreland in the Plan Area is zoned in the Great Pond Protection (P-GP) subdistrict, while virtually all of the interior is designated as being within the General Management (M-GN) subdistrict. These current zoning designations do not adequately, efficiently, or effectively manage the uses and resources within the Plan Area. Under the status quo of the existing regulatory framework, random, haphazard development of the shoreland and interior areas can occur through a variety of mechanisms. In similar areas of the jurisdiction, unrelated rezoning petitions are approved for areas adjacent to existing, compatible development – which often results in uncoordinated, unplanned growth that can spread to inappropriate areas through the concept of “leapfrogging”, discussed below.

The existing land use standards applicable to the majority of the Plan Area allow the construction of new houses, but prohibit subdivisions. Absent a concept plan, all new subdivision development in the region must necessarily occur through adjacent rezoning petitions associated with subdivision applications. Under this process, there is no guarantee that new development will be concentrated in appropriate areas, and no conservation balance is required.

The CLUP explains how the use of successive, unrelated zoning petitions in connection with subdivision applications may result in sprawling, inappropriate development. “Once an area is rezoned and developed, it can, in turn, serve as the basis for rezoning other areas...[which] has the potential to sanction a leapfrogging effect in which each new development potentially becomes the existing, compatible developed area from which adjacency for the next development can be measured.”⁴ Therefore, subdivision development may spread to inappropriate areas, and also may ignore currently undeveloped areas that are appropriate for designation as new development centers under the guidelines of the CLUP. As an example, the CLUP notes that “a rezoning proposal in Soper Mt. Township might succeed if it were located near five otherwise isolated seasonal camps, while a similar proposal in Argyle, a few miles away from Interstate 95, may fail because there are no dwellings in the vicinity.”⁵

The Plan creates explicit boundaries around areas where new development is appropriate, and strictly limits or prohibits development outside of those areas. These boundaries are based upon sound planning principles, and consider the unique characteristics of the affected areas and of the region as a whole. By contrast, the current regulatory framework applies the generic adjacency standard to proposals to rezone areas to development subdistricts. This generic standard does not take into consideration any extraneous factors, such as how the proposal fits into region-wide planning, or whether the area, itself, is appropriate for development, rather than applying general subdivision principles and standards on a jurisdiction-wide basis. In addition, the Plan provides significant, permanent conservation measures to further protect natural resources and remote areas.

Further, the existing zoning designations do not include provisions for conservation, recreation infrastructure, economic development, and other public benefit activities and uses promoted and encouraged in the CLUP and provided by the Plan. The Plan allows those uses in appropriate areas, while prohibiting them elsewhere, thereby providing the significant benefits of such uses without detracting from the remote character of the region or adversely affecting the natural resources within it. This level of integrated management and protection is not possible under existing regulations.

When compared to the level of protection and management afforded by the existing subdistrict designations, the Plan’s appropriately located development envelopes, restrictive zoning outside of those envelopes, and high levels of conservation balance demonstrate that the Plan is more appropriate for the protection and management of the uses and resources of the Plan Area than the current subdistrict designations.

⁴ CLUP at p. 124.

⁵ CLUP at p. 124.

Regulatory Standards

2. Chapter 10, Section 10.08, LURC Rules and Standards - adoption of land use district boundaries

In Chapter 10, Section 10.08, LURC's Rules and Standards set out two standards that must be met for adoption or amendment of land use district boundaries.

Commission's Rules and Standards §10.08

A. GENERAL CRITERIA

"A land use district boundary may not be adopted or amended unless there is substantial evidence that:

- 1. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and*
- 2. The proposed land use district satisfies a demonstrated need in the community or area and has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area." 12 M.R.S.A. §685-A(8-A).*

B. AREAS ADJACENT TO LAKES

The review standards listed in Section 10.25,A must be considered in applying the above criteria to proposed changes in subdistrict boundaries adjacent to lakes.

A. Chapter 10, Section 10.08, A - general criteria

Section 10.08,A repeats the same standards found in 12 M.R.S.A. § 685-A (8-A), which are addressed in Section 1, above.

B. Chapter 10, Section 10.08,B – areas adjacent to lakes

See Section 3, below, for a discussion of the review criteria for projects adjacent to lakes.

3. Chapter 10, Section 10.25,A, LURC Rules and Standards – shoreland review criteria

Section 10.25,A of the Commission's Rules and Standards contains seven specific review criteria for structures adjacent to lakes. Section 10.08,B requires that these review criteria also be evaluated as part of the review process for any changes in subdistrict boundaries adjacent to lakes. The following standards, then, are applicable to the concept plan application:

Commission's Rules and Standards § 10.25

A. REVIEW STANDARDS FOR STRUCTURES ADJACENT TO LAKES

The standards set forth below must be met for all subdivisions and commercial, industrial, and other non-residential structures and uses proposed on land adjacent to lakes. These standards must also be considered in applying the criteria for adoption or amendment of land use district boundaries, as provided in Section 10.08, to proposed changes in subdistrict boundaries adjacent to lakes.

In applying the standards set forth below, the Commission shall consider all relevant information available including the Maine Wildlands Lake Assessment Findings (Appendix C of this chapter), and relevant provisions of the Comprehensive Land Use Plan.

- 1. Natural and cultural resource values: The proposal will not adversely affect natural and cultural resource values identified as significant or outstanding in the Wildland Lakes Assessment (Appendix C of this chapter).*
- 2. Water quality: The proposal will not, alone or in conjunction with other development, have an undue adverse impact on water quality;*
- 3. Traditional uses: The proposal will not have an undue adverse impact on traditional uses, including without limitation, non-intensive public recreation, sporting camp operations, timber harvesting, and agriculture;*
- 4. Regional diversity: The proposal will not substantially alter the diversity of lake-related uses afforded within the region in which the activity is proposed;*
- 5. Natural character: Adequate provision has been made to maintain the natural character of shoreland;*
- 6. Lake management goals: The proposal is consistent with the management intent of the affected lake's classification; and*
- 7. Landowner equity: Where future development on a lake may be limited for water quality or other reasons, proposed development on each landownership does not exceed its proportionate share of total allowable development.*

The following discussion demonstrates how the Plan meets each of these review criteria.

A. Natural and Cultural Resource Values.

§10.25,A,1. Natural and cultural resource values: The proposal will not adversely affect natural and cultural resource values identified as significant or outstanding in the Wildland Lakes Assessment (Appendix C of this chapter).

Of the seven lakes and ponds where shoreland development is proposed, 4 are rated as 1A (of statewide significance, with two or more outstanding values); 2 are rated 1B (of statewide significance, having one outstanding value) and 1 is rated 2 (having regional significance, with no outstanding values, but at least one significant value). Following is a discussion of each of

the natural resource values, the lakes that are rated outstanding or significant for these values, and how the proposed development will protect them.

Fisheries

All seven lakes and ponds are rated as either significant or outstanding for their fisheries. The Maine Department of Inland Fisheries and Wildlife (“MDIF&W”) has established special regulations for these water bodies in order to protect the integrity of the fisheries.

Brassua Lake has fishing regulations prohibiting the taking of smelt and the use of live bait. Regulations for Indian Pond also prohibit the taking of smelt; have special bag and length limits, but also have an extended fishing season. For Long Pond, there are special length and bag limits, and it also has an extended fishing season. On Moosehead Lake, no smelt may be taken, and there are special length and bag limits. There are also special regulations on the length and number of fish taken between April and the end of October. Finally, on Upper Wilson Pond, no live bait may be used and there are special length and bag limits. MDIF&W reassesses these regulations and their effectiveness on a regular basis, thus the Department will adjust the regulations if any change in the fishery, either positive or negative, warrants it.

LURC’s standards for shorefront setbacks, clearing, and the state plumbing code are designed to minimize potential negative effects of development near lakes and ponds. The Plan adopts these standards in their entirety. On Burnham Pond, the Plan will prohibit the use of motor boats due to the shallowness of the pond. This will add an extra measure of insurance that the health of the fishery will be maintained.

Wildlife

All the lakes and ponds but Brassua Lake are rated as significant or outstanding for their wildlife, however, there are two eagle nest sites on Little Brassua that require special consideration. These two sites are both on the west shore, near the inlet of the Moose River. DIF&W regulations restrict activities within ¼ mile of nests; the nearest proposed development is more than a mile over the water, and so does not pose a threat to these nest sites. Furthermore, the shorefront on this part of the lake is proposed for permanent conservation, tied to shorefront subdivision approvals. Thus, as development is approved on Brassua, the shorefront at this location will be permanently protected.

Scenic Quality and Shoreline Character

Long Pond, Moosehead Lake, Prong Pond and Upper Wilson Pond have significant or outstanding scenic quality and shore characteristics according to the Wildlands Lake Assessment. The Plan utilizes various mechanisms for minimizing impacts to these values on the lakes and ponds:

1. *The Plan designates most of Plum Creek’s shorefrontage on these water bodies for permanent conservation (see Part II of the Plan Description).*

2. *The Plan incorporates LURC's open space standards for shorefront subdivisions, requiring at least 30% of the shorefront within the subdivisions be left as open space in non-clustered subdivisions, and 50% open space in clustered subdivisions (in addition to the shorefront in permanent conservation) (see Part V and VI of the Plan Description).*

3. *The Plan adopts LURC's new clearing standards (see Part VIII of the Plan Description).*

4. *The Plan requires that lot buyers join homeowner associations that will have covenants restricting building height, color, and materials in order to ensure the development fits harmoniously within the environment. (see Part V and VI of the Plan Description and the Sample Homeowners Association Declaration of Covenants).*

5. *The Plan establishes subdivision design guidelines to minimize visual impacts of buildings and roads (see Part V and VI of the Plan Description).*

6. *The Plan incorporates specific guidelines for the design of the resorts that will ensure these facilities fit the natural and cultural context (see Part V, VII and VIII of the Plan Description).*

Permanent Conservation: The Plan proposes to balance shorefront development on seven lakes and ponds with significant permanent shoreland conservation on those same waterbodies. Taken together, 72% of all the shoreland will be conserved, phased in tandem with shoreland subdivision approvals. These easements will ensure that most of the Plum Creek shoreland will remain as it is today, with no impacts on scenic quality or shoreline character.

Open Space Requirements: The Plan adopts LURC standards for open space within subdivisions. The result is that, even within the subdivisions, significant amounts of the shoreland will remain unchanged. The following table lists the seven lakes and ponds and the relative amount of shoreland on each that will be within permanent conservation easements and open space, ensuring that the vast majority of the shoreland on these lakes and ponds will remain essentially unchanged and that the scenic quality of these waters will be forever protected.

Lake/Pond	Total Lake Shorefront (Miles)	Plum Creek Total Shorefront (miles)	Shore Owned by Plum Creek (%)	Total Shore in Planning Envelope (%)	Plum Creek Shore Conserved (%)	Easement + Open Space (% of Plum Creek Ownership)
Brassua Lake	63.5	43.5	69%	15%	78%	85%
Burnham Pond	4.4	4.4	100%	26%	74%	82%
Indian Pond	39.3	5.2	13%	5%	64%	75%
Long Pond	21.9	12.6	57%	20%	65%	75%
Moosehead Lake East	117.0	3.8	3%	1%	68%	77%
Moosehead Lake West	93.8	15.6	17%	6%	67%	72%
Prong Pond	8.2	4.7	57%	23%	60%	72%
Upper Wilson Pond	8.5	8.3	98%	24%	76%	88%
Totals	356.5	98.2	28%	8%	72%	80%

Clearing Standards: The Plan adopts LURC's current standards for clearing in areas up to 250 feet from the water. These standards are newly adopted by LURC, and impose strict

limits on clearing on and adjacent to the shorefront. The effect of these standards will be to screen views of buildings from the water. Because all buildings will be set back from the shore at least 100 feet, there will be a substantial amount of tree cover between structures and the shore. This is one of several standards that will minimize any impacts to scenic quality.

Homeowner Association Covenants: The sample Homeowner Association Declaration and Covenants stipulate that there will be limits to building height, color, and material in order to minimize their visibility from the water. Buildings cannot be more than 35 feet from the highest natural grade adjacent to the house, building colors must be natural and blend with their surroundings, and reflective materials cannot be used. Additional subdivision beyond that authorized by the Concept Plan and associated subdivision permits is prohibited. These measures add a further layer of protection of the scenic quality and shore character of the lakes and ponds.

Subdivision Design Guidelines: The Plan incorporates guidelines for the subdivisions that are designed to minimize or eliminate scenic impacts of buildings and roads. These include setbacks along public and forest management roads in order to maintain a vegetative buffer, siting structures so that they are screened by vegetation or topography, utilizing shared driveways to minimize road building, siting roads and lots so that ridgelines are not broken, and minimizing clearing on backland lots beyond 250 feet from the water. Implementation of these guidelines will ensure that most development will not be noticed from public roads or waters.

Resort Guidelines: The Guidelines for the design of the resorts include the principle of designing with reference to natural, cultural, and historical character. Thus, the resorts will fit with the Moosehead region's character, while being relatively unobtrusive.

Botanical Features, Cultural Resources, Physical Resources

Moosehead Lake is rated as outstanding for its botanical, cultural, and physical resources; Long Pond and Brassua Lake are rated as "outstanding" for their cultural features; Brassua Lake, Indian Pond and Moosehead Lake have significant or outstanding cultural resources; and Upper Wilson Pond is rated as a significant physical resource. The conservation proposed by the Plan, in conjunction with the development guidelines and standards, will ensure that these values are protected for the long term.

B. Water Quality

<p><i>§10.25,A,2. Water quality: The proposal will not, alone or in conjunction with other development, have an undue adverse impact on water quality;</i></p>
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Plum Creek has contracted with DeLuca-Hoffman Associates to conduct preliminary phosphorus studies of the proposed development. The study's methodology is based on the Maine Department of Environmental Protection's 1992 document titled: "Phosphorus Control in Lake Watersheds: A Technical Guide to Evaluating New Development." This methodology takes into consideration the sensitivity of the waterbody with regard to the resources that need to be protected, the current development within the township or watershed, the proposed

development in the township or watershed, and any other development that may occur over the next 50 years.

The study concludes that, for Brassua Lake and Indian, Long, and Upper Wilson Ponds, phosphorus loading from the proposed development will be within acceptable levels, even without standard measures to control phosphorus migration. Standard mitigation measures are recommended for subdivisions on Prong and Burnham Ponds, including vegetative buffers, minimizing road and driveway construction, infiltration areas, and wet basins, as well as temporary and permanent erosion control measures.

Some of the suggested measures are already incorporated into the design guidelines and standards of the Plan, and the erosion control measures are addressed in the Appendix to the Plan Description. Others will be addressed when individual subdivisions are designed. Please see the Appendix to the Plan for the full text of phosphorus reports.

C. Traditional Uses

§10.25,A,3. Traditional uses: The proposal will not have an undue adverse impact on traditional uses, including without limitation, non-intensive public recreation, sporting camp operations, timber harvesting, and agriculture;

One of the primary purposes of the Plan is to protect and promote traditional uses of the Plan Area and the larger Moosehead Lake region. The Plan conserves large blocks of forest land for forestry and recreation; it proposes two resorts, one on each side of Moosehead Lake, in order to promote traditional uses and non-intensive public recreation; and it guarantees traditional public access to all lands within the conservation easement areas to ensure these recreational uses continue indefinitely into the future. These three cornerstones of the Plan — permanent working forest easements, eco-tourism, and public access — together constitute the bedrock on which the Moosehead region can build its future while protecting its natural and cultural heritage.

While the original Plan envisioned specific areas for campgrounds and limited the number of sporting camps per township, the current, amended Plan does not. The scoping sessions held in the summer of 2005 revealed ambivalence among the public as to whether these facilities would benefit the region. Absent clear public support, this Plan does not designate areas for these purposes.

D. Regional Diversity

§10.25,A,4. Regional diversity: The proposal will not substantially alter the diversity of lake-related uses afforded within the region in which the activity is proposed;

This Plan seeks to affirm and support the full diversity of uses within the Plan Area, whether on land or water. The Plan does not alter the current uses of the land, but rather envisions a coherent, planned use of the landscape that promotes a wide diversity of traditional uses.

The Plan and the Conservation Framework (which is made possible only if the Plan is approved) promote traditional consumptive and non-consumptive uses by guaranteeing traditional public access to conserved areas. Canoeists, kayakers and fishers will always know they can put in at any of the conserved shorelands for a lunch break. Guides, guests and residents will know they can always access the forest lands to watch moose or eagles. Traditional public access will ensure these activities can continue to be a part of the Moosehead region's attractiveness.

The Plan promotes snowmobiling, hiking, biking, and cross-country skiing by allowing for the creation of 144 miles of permanent trails for those purposes. In addition, the Plan will establish a fund that will support the creation and maintenance of the trail systems, so that the public can be assured that these recreational facilities will come to fruition. While hiking, biking, and cross-country skiing are not new activities in the Moosehead region, there are currently few opportunities for these sports due to the lack of trails. The Plan will greatly expand these opportunities through the trail networks and two resort areas.

E. Natural Character

§10.25,A,5. Natural character: Adequate provision has been made to maintain the natural character of shoreland;

The Plum Creek Plan includes numerous provisions to protect the natural character of the Moosehead region and the specific areas subject to the Concept Plan. All existing clearing standards and setbacks have been maintained or enhanced, open space requirements have been implemented for all shoreland subdivisions, and specific design criteria have been established for all development activities to ensure that the natural character is not adversely affected. Please also refer to the discussions in Sections 3.A., 4.D., and 4.F. hereof, and Section 18.g. of the Rezoning Petition for a further demonstration of how the Plan preserves the natural character of the shoreland within the Plan area.

F. Lake Management Goals

§10.25,6. Lake management goals: The proposal is consistent with the management intent of the affected lake's classification; and

Of the seven lakes and ponds where Plum Creek is proposing development, three (Brassua Lake, and Indian and Long Ponds) are Class 3, two (Prong and Burnham Ponds) are Class 7, one (Upper Wilson) is Class 4, and one (Moosehead Lake) is classified as both Class 7 and as "potential Class 3."⁶

Brassua Lake, Indian Pond and Long Pond

⁶ See pages C-8 and C-13 of the CLUP.

*"The Commission supports additional responsible development around Class 3 lakes, yet will take care to ensure that their significant natural resource values are conserved. The Commission will waive the adjacency criterion for development proposals on these lakes provided it can be demonstrated to its satisfaction by clear and convincing evidence that the lake has no existing or potential water quality problems and that soils are suitable for development. This waiver is strictly limited to shoreland, and proximate areas may not subsequently use shoreland development on Class 3 lakes to meet the adjacency criterion."*⁷

The development proposed for Brassua Lake, and Indian and Long Ponds is consistent with the management goals for Class 3 lakes. These are large lakes with no potential water quality problems, and it has been determined that the proposed development will not adversely affect water quality (see the Phosphorus Study in the Appendices to the Plan).

Preliminary soil surveys have been conducted for all the shoreland areas where development is proposed. The results of these studies can be found in the Appendix as well. The soils analysis has been conducted according to the standards set under Chapter 10, Section 10.25G.2 of LURC's standards, and has concluded that all proposed development areas are suitable for the proposed development.

Finally, the significant natural resources of these lakes will be conserved through the use of conservation easements, open space standards, and development standards, as more fully set forth in the Plan Description.

Prong and Burnham Ponds

*"Management Class 7 consists of all lakes not otherwise classified, including many lakes which have multiple outstanding or significant resource values identified in the Wildland Lakes Assessment. The Commission will manage these lakes for multiple use, including resource conservation, recreation, and timber production, giving specific consideration to identified resource values when evaluating the merits of lake-related rezoning and permit applications."*⁸

Consistent with the Commission's goal of managing Class 7 ponds for multiple uses, the Plan proposes permanent conservation, recreational uses, and timber production for the Burnham and Prong Pond areas. Sixty-four percent of the shoreline of Prong Pond, and 74% of Burnham Pond will be permanently conserved under this Plan. The easements on the shoreland will guarantee public access, ensuring that these ponds will be able to be used for recreation by all forever. In addition, the easements will protect fish and wildlife habitat and scenic values. Burnham Pond is unusual in that it is so shallow, and the Plan takes this characteristic into consideration by prohibiting motorboats on the pond. There are LURC-identified wildlife habitat zones on the shores of both ponds, but no part of these zones is within any planning envelope. Further, any subdivision within a shoreland planning envelope must devote at least 30% of the shoreline within the envelope to open space. Finally, the areas surrounding the ponds and within the shoreland itself will have continued sustainable forestry uses, ensuring that timber production will remain one of the important uses of this land.

⁷ CLUP, p. C-7.

⁸ CLUP, p. C-8.

Upper Wilson Pond

"Management Class 4 lakes are high value, developed lakes. The Commission's goal for these lakes is to allow a reasonable level of residential and recreational development while conserving natural resource values and maintaining undeveloped shoreland areas. The Commission will take special care in evaluating and regulating new subdivisions proposed on these lakes and will require cluster development to protect natural values except where clearly inappropriate due to site characteristics."

The planning for Upper Wilson Pond has been particularly careful, in consideration of its status as a Class 4 lake. Thirty-five lots are proposed for the Upper Wilson Pond shore, in clusters of 2-10 lots. Clustering the lots closely together (in accordance with LURC regulations) has the benefit of increasing the amount of shoreland that can be placed in permanent conservation easement. More than three quarters of Plum Creek's ownership on Upper Wilson Pond will be placed in conservation easement under the terms of the Plan, protecting the fisheries, wildlife habitat, shore character and physical resources that are rated as significant or outstanding on this pond. Keeping the number of lots per cluster low and setting strict limits on vegetative clearing and construction materials, minimizes the visual impacts of tightly spaced lots and further ensures that the scenic character of the pond will be protected.

Plum Creek's staff has identified a bald eagle's nest on an island in South Cove on Upper Wilson. While the six lots proposed for the east shore of the cove are outside the ¼-mile radius within which the Maine DIF&W prohibits disturbance, the Plan takes extra measures to ensure the eagles will not be affected by the development. For shorelots within 2,000 feet of the nest, no construction shall be permitted during the eagle's breeding/nesting season, as defined by Inland Fisheries & Wildlife, if the nest is found to be "active."

G. Landowner Equity

<p><i>§10.25,A,7. Landowner equity: Where future development on a lake may be limited for water quality or other reasons, proposed development on each landownership does not exceed its proportionate share of total allowable development.</i></p>
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The proportionate share of total allowable development for each landowner on any particular lake is determined by LURC based on the 1 lot per 10 acres of lake surface, 1 lot per 400 feet of shorefront, and the number of dwellings already on the landowner's property. The shorefront and lake area criteria are LURC's means of roughly determining the amount of development that can occur on the shorefront without adversely affecting water quality, surface use, or other factors. The following table calculates the total equitable lot buildout per lake.

Lake/Pond	Township	Area	Class	Total Plum Creek Shore Front	Total Lake Shore Front	% Plum Creek Shorefront Ownership	1/400 Ft.	1/10 Acres	Existing Plum Creek Camps	Buildout/ Lake	Proposed Shorefront Lots	Buildout Minus Proposed Lots
Brassua Lake	various	8979	3	229,680	335,173	69%	574	615	2	572	164	408
Burnham Pond	Big Moose Twp.	426	7	23,304	23,304	100%	58	43	0	43	21	22
Indian Pond	Indian Stream Twp.	3746	3	27,300	207,300	13%	68	49	3	46	34	12
Long Pond	Long Pond Twp.	3053	3	66,359	115,759	57%	166	175	0	166	79	87
Moosehead Lake	various	74,890	3,7	102,716	1,112,567	9%	257	691	1	256	112	144
Prong Pond	Beaver Cove	427	7	25,001	43,528	57%	63	25	3	22	35	-13
Upper Wilson Pond	Bowdoin College West	940	4	43,877	44,700	98%	110	92	0	92	35	57
Total										1,187	480	707

Overall, Plum Creek is proposing less than half (46%) of the total shorefront buildout for the seven lakes and ponds, or 707 fewer lots. On a lake by lake basis, the amount of proposed development ranges from 408 fewer lots than allowable in the case of Brassua Lake, to 13 lots more on Prong Pond. However, the proposed development on Prong Pond is 28 fewer lots than the 1-lot-per-400-feet-of-shorefront-ownership criterion. Moreover, landowner equity is not, in reality, an issue on Prong Pond, as the vast majority of the shorefront the Plum Creek does not own is not developable. In terms of water quality, the Plan makes provision for quality subdivision road designs in order to minimize phosphorus export.

4. Chapter 10.23,H.6. LURC Rules and Standards - Concept Plan Review Criteria

Chapter 10.23,H.6 of LURC's Rules and Standards establishes the "Criteria for Review" for all proposals to rezone areas to the Resource Plan Protection subdistrict. Those criteria are as follows:

The Commission may approve a [Concept] Plan and any associated redistricting only if it finds that all of the following criteria are satisfied:

- a. The plan conforms with redistricting criteria;*
- b. The plan conforms, where applicable, with the Commission's Land Use Districts and Standards;*
- c. The plan conforms with the Commission's Comprehensive Land Use Plan;*
- d. The plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces. In the case of concept plans, this means that any development gained through any waiver of the adjacency criteria is matched by comparable conservation measure;*
- e. The plan has as its primary purpose the protection of those resources in need of protection, or, in the case of concept plans, includes in its purpose the protection of those resources in need of protection;*
- f. In the case of concept plans, the plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources; and*

*g. In the case of concept plans, conservation measures apply in perpetuity, except where it is demonstrated by clear and convincing evidence that other alternative conservation measures fully provide for long-term protection or conservation.*⁹

The discussion below demonstrates how the Plan meets each of these review criteria for concept plans.

A. 10.23.H.6.a. - Conforms with redistricting criteria

§10.23,H,6,a. The plan conforms with redistricting criteria;

Chapter 10.23,H.6's first resource plan criterion is that "[t]he plan conforms with redistricting criteria." LURC's redistricting criteria are specified by State statute. *See* Section 1, above, for a discussion of the statutory redistricting criteria of 12 M.R.S.A. § 685-A(8-A).

B. 10.23.H.6.b. - Conforms with LURC Land Use Districts and Standards

§10.23,H,6,b The plan conforms, where applicable, with the Commission's Land Use Districts and Standards;

The Plan incorporates all of LURC's normal standards for site suitability, including dimensional requirements (with the exception of shorefrontage, which may be reduced to 100 feet under certain circumstances). The Plan deviates from the existing dimensional requirements by reducing the maximum residential building height from 75 feet to 35 feet, and limits to four stories buildings associated with resort development. This deviation is intended to better ensure that the development will not have an undue adverse impact on scenic or natural resources. Lighting, screening, and noise restrictions in the homeowners association covenants, and design guidelines contained within the Plan add additional protective measures currently not available in the Plan Area. The existing clearing, wetlands alternation, road construction, erosion control, scenic character, soil suitability, solid waste disposal, waste water disposal, water supply, surface water quality, phosphorus control, and other such standards have all been incorporated into the Plan's land use standards.

C. 10.23,H.6.c. - Conforms with CLUP

§10.23,H,6,c. The plan conforms with the Commission's Comprehensive Land Use Plan;

The Plan's consistency with the CLUP is addressed Section 1.A.(2), above.

D. 10.23.H.6.d. - at least as protective of natural environment

⁹ Ch. 10.23,H.6.

§10.23,H,6,d. The plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces. In the case of concept plans, this means that any development gained through any waiver of the adjacency criteria is matched by comparable conservation measure;

The Plan is more protective of the natural environment than the existing land use standards. Presently, the vast majority of the Plan Area is designated as being within the General Management (M-GN) subdistrict. The remaining land is in either Commercial Industrial (D-CI) or Residential (D-RS) Development subdistricts or one of various protection subdistricts. In all but a few of these subdistricts, residential development of some form is allowed with a permit from the Commission. By contrast, residential development in this Plan is stripped out of all but 2.5% of the Plan Area, and additional standards and guidelines established by the Plan will prevent development on at least half of that percentage.

The Plan seeks to concentrate the currently allowed residential uses into carefully selected areas; the Plan allows residential subdivisions in these discreet areas, and prohibits residential development everywhere else. By doing so, the Plan guides development to the most appropriate areas - near service centers, adjacent to existing development, along heavily traveled public highways, and in areas appropriate as new development centers - and prohibits residential development from occurring in other, more remote areas. The result is the creation of vast tracts of land that is essentially relegated to forest management uses.

The uses allowed with and without a permit in the proposed P-RP subdistrict are based upon those of the existing M-GN subdistrict – the predominant subdistrict in the Plan Area. Outside of the planning envelopes, areas within existing protection subdistricts will have the same land use standards as those subdistricts elsewhere in the Unorganized Territories (with the exception of residential uses, which will be prohibited, and road construction and water crossing standards, which will be fixed at the present standards for the life of the Plan). Within the planning envelopes, the land use standards of existing protection subdistricts (with the exception of certain P-GP subdistricts) will retain the same land use standards as currently exist in those subdistricts, and which shall remain fixed for the life of the Plan. A small portion of the land in the existing P-GP subdistricts will be encompassed within the planning envelopes, and will be governed by the land use standards applicable to those envelopes. Roughly two and a half percent of the Plan area is encompassed by the planning envelopes, which include shoreland and backland envelopes (the standards for which parallel the existing D-RS subdistrict), and resort envelopes (the development review process for which is derived from, and closely resembles, the review process for adoption of a D-PD subdistrict).

The table below compares the land uses allowed within LURC's current M-GN subdistrict and those proposed under the Plan's P-RP subdistrict.

Uses		Subdistrict	
		M-GN (Existing)	P-RP (Proposed)
Uses Allowed Without a Permit			
1	Emergency operations conducted for the public health, safety or general welfare, such as resource protection, law enforcement, and search and rescue operations	Yes	Yes
2	Forest management activities	Yes	Yes (but limited in development envelopes)
3	Land application of septage, sludge and other residuals, and related storage and composting activities in compliance with regulations promulgated by the Maine Department of Environmental Protection under 38 M.R.S.A. §13: Maine Hazardous Waste, Septage and Solid Waste Management Act	Yes	Yes
4	Motorized vehicular traffic on roads and trails, and snowmobiling	Yes	Yes
5	Primitive recreational uses, including fishing, hiking, hunting, wildlife study and photography, wild crop harvesting, trapping, horseback riding, tent and shelter camping, canoe portaging, cross country skiing, and snowshoeing	Yes	Yes
6	Surveying and other resource analysis	Yes	Yes
7	Trails, provided they are constructed and maintained so as to reasonably avoid sedimentation of water bodies	Yes	Yes
8	Wildlife and fishery management practices	Yes	Yes
Uses Allowed Without a Permit Subject to Standards			
1	Agricultural management activities, including cranberry cultivation and the construction, alteration or maintenance of farm or livestock ponds which are not fed or drained by a flowing water	Yes	Yes
2	Campsites	Yes	Yes
3	Checkpoint buildings	Yes	Yes
4	Creation, alteration or maintenance of constructed ponds, other than those used for agriculture, less than 1 acre in size which are not fed or drained by flowing waters	Yes	Yes (but limited in development envelopes)
5	Driveways associated with residential uses	Yes	Yes
6	Filling and grading	Yes	Yes
7	Land management roads, in accordance with the guidelines in Chapter 15 of the Commission's rules	Yes	Yes
8	Level A and B road projects	Yes	Yes
9	Level A mineral exploration activities, including associated access ways	Yes	Yes

10	Mineral extraction operations, less than 5 acres in size	Yes	Yes
11	Minor home occupations	Yes	Yes (but only for existing residences outside of planning envelopes)
12	Parking areas, roads, signs and similar facilities associated with public trailered ramps and private and commercial hand-carry launches	Yes	Yes
13	Service drops; and buildings or structures necessary for the furnishing of public utility services, provided they contain not more than 500 square feet of floor area, are less than 20 feet in height, and are not supplied with water. Wire and pipe line extensions which do not meet the definition of service drops shall require a permit	Yes	Yes
14	Signs	Yes	Yes
15	The operation of machinery and the erection of buildings including buildings to store equipment and materials for maintaining roads and other structures used primarily for agricultural or forest management activities	Yes	Yes
Uses Requiring a Permit			
1	Campgrounds	Yes	No
2	Commercial sporting camps having a total gross floor area of no more than 10,000 square feet for all principal buildings concerned	Yes	No
3	Creation, alteration or maintenance of constructed ponds, other than those used for agriculture, which are 1 acre or more in size, or such ponds less than 1 acre	Yes	Yes
4	Driveways associated with non-residential uses; driveways associated with residential uses which are not in conformance with applicable standards	Yes	Yes
5	Family burying grounds of not more than ¼ acre, in accordance with 13 M.R.S.A. §1142	Yes	Yes
6	Filling and grading, which is not in conformance with the applicable standards and draining, dredging, and alteration of the water table or water level for other than mineral extraction	Yes	Yes
7	Land management roads which are not in conformance with the guidelines in Chapter 15 of the Commission's rules	Yes	Yes
8	Level 2 subdivisions (in select townships)	Yes	No
9	Level A mineral exploration activities, including associated access ways, which are not in conformance with the applicable standards	Yes	Yes
10	Level B mineral exploration activities	Yes	Yes
11	Level C road projects	Yes	Yes

12	Major home occupations, except in select townships	Yes	No
13	Maple sugar processing operations	Yes	Yes
14	Mineral extraction operations (a) affecting an area less than 5 acres in size and which are not in conformance with the applicable standards; (b) affecting an area between 5 and 30 acres provided the unreclaimed area is less than 15 acres; and (c) structures essential to the extraction activity having a total gross floor area of no more than 2,000 square feet	Yes	Yes
15	Non-commercial structures utilized for educational, scientific, or nature observation purposes	Yes	Yes
16	Parking areas, roads, signs and similar facilities associated with commercial and private trailered ramps and such facilities which are not in conformance with the applicable standards	Yes	Yes
17	Peat extraction affecting an area less than 30 acres in size	Yes	Yes
18	Portable mineral processing equipment	Yes	Yes
19	Remote rental cabins	Yes	No
20	Residential: Single and two-family dwellings	Yes	No (except in development envelopes)
21	Sawmills and chipping mills on sites of less than 5 acres	Yes	Yes
22	Signs which are not in conformance with the applicable standards	Yes	Yes
23	Solid waste disposal facilities affecting an area less than 2 acres in size	Yes	Yes
24	Structures devoted to composting of sludge, septage or other residuals affecting an area less than 5 acres in size	Yes	Yes
25	Structures devoted to the storage of sand or salt	Yes	Yes
26	Truck and equipment storage	Yes	Yes
27	Utility facilities, excluding service drops	Yes	Yes
28	Water impoundments	Yes	Yes
29	Other structures, uses, or services that are essential to the uses listed above	Yes	Yes
30	Other structures, uses, or services which the Commission determines are consistent with the purposes of this subdistrict and of the Comprehensive Land Use Plan and are not detrimental to the resources or uses they protect	Yes	Yes
Special Exceptions			
1	Major home occupations in select townships	Yes	N/A

As this table demonstrates, residential uses, sporting camps, campgrounds, level 2 subdivisions, and remote rental cabins currently allowed under existing standards will not be

permitted within the Plan Area (except for the limited residential development permitted in the planning envelopes).

Just as residential uses have been stripped from the M-GN subdistricts, residential uses also will not be permitted in any of the existing protection subdistricts (except for areas within the planning envelopes). The following table lists the protection subdistricts in which residential development is currently allowed, but where such development will be prohibited under the Plan's land use standards.

Protection Subdistrict	Residential Uses Allowed	
	Current Zoning	Plan's Zoning
Accessible Lake Protection (P-AL)	Yes	No
Aquifer Protection (P-AR)	Yes	No
Flood Prone Area Protection (P-FP)	No	No
Fish and Wildlife Protection (P-FW)	Yes	No
Great Pond Protection (P-GP)	Yes	No
Mountain Area Protection (P-MA)	No	No
Recreation Protection (P-RR)	No	No
Special River Transition Protection (P-RT)	Yes	No
Soils and Geology Protection (P-SG)	No	No
Shoreland Protection (P-SL)	Yes	No
Unusual Area Protection (P-UA)	Yes	No
Wetland Protection (P-WL)	No	No

All other uses and restrictions applicable to the existing protection subdistricts shall be applicable to the same areas for the life of the Plan (except as noted earlier).

With respect to the proposed resorts, the development review process proposed by the Plan is based upon the existing Planned Development (D-PD) subdistrict's development procedures. No resort development can take place except after a site plan review process, which includes a public hearing. All existing development criteria, including the requirement that the proposal fit harmoniously within the natural environment, will continue to apply.

Under current regulations, a D-PD proposal could be submitted to the Commission in many locations within the Plan Area. The Plan limits this ability to two distinct areas, and establishes numerous design guidelines - which do not exist with respect to the current D-PD standards - that ensure that any project in these areas is sustainably developed and has minimal negative impact on the environment.

In addition to the zoning changes described above, approval of the Plan will trigger an immediate donation of a landscape-scale conservation easement on 61,000 acres of unfragmented forestland (including five ponds), and additional conservation easements totaling approximately 10,000 acres on 54 remote ponds (only 8 of which currently have zoning that prohibits residential development), and the remaining shorefronts of the 7 lakes and ponds on which limited development is proposed. These conservation easements will prohibit residential development and limit all land uses in this vast area and across these waterbodies (with the

exception of the planning envelopes) to forest management and public recreation, forever. There is no mechanism under current LURC regulations which can achieve this level of protection over such a large area or so many waterbodies.

While the Plan does allow residential subdivision development within the planning envelopes (on less than 2 percent of the Plan Area), this development is guided to the most appropriate locations. A comparable amount of similar development could be achieved without a concept plan, through a variety of regulatory mechanisms, including level 2 subdivisions, adjacent rezonings, management class 3 lake rezonings, and single lot transactions. Recent third party analyses have been undertaken which give a range of potential development levels and scenarios absent a concept plan. These levels are based on varying assumptions and methodologies, and any number of other assumptions and methodologies could be used to arrive at any number of other potential development levels. However, those studies that have been completed recently provide potential development levels (with varying degrees of probability) ranging from 447 to over 1,000 new residential lots over the life of the Plan. While some of these scenarios are more likely than others, none would result in as high a level of permanent conservation as that proposed by the Plan, and none would involve the same region-wide approach to the careful location of development as that afforded by the Plan.

E. 10.23,H.6.e. – protection of resources included in purpose

10.23,H.6.e. The plan has as its primary purpose the protection of those resources in need of protection, or, in the case of concept plans, includes in its purpose the protection of those resources in need of protection;

The purposes of the Plan are to:

- protect the resources in the vast, undeveloped tracts of forestland (and the waterbodies, habitats and other valuable resources they contain) that create the unique, remote character of the region.
- ensure the sustainability of the forest resource.
- sustain and enhance existing communities by providing economic growth opportunities, recreation opportunities and affordable housing.
- provide traditional public access to Plum Creek's lands to maintain the character, economy, quality of life and diverse recreational opportunities in the region.
- locate site development to be consistent with the CLUP.

By limiting development to 1% of the Plan Area and prohibiting residential development in the remaining 99% of the Plan Area, by conveying a working forest conservation easement over 61,000 acres; by granting a 5 year option to The Nature Conservancy to purchase a working forest conservation easement over another 269,000 acre region, and to acquire in fee an additional 27,000 acres; by conserving forever 59 lakes and ponds; by conserving 88% of all shorefront owned by Plum Creek in the Plan Area; and by creating over 144 miles of permanent trails, the Plan achieves the purpose of protecting those resources in need of protection.

F. 10.23,H.6.f. - balance between development and conservation

10.23,H,6,f. In the case of concept plans, the plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources; and

When examining the balance between appropriate development, on the one hand, and long-term conservation of resources, on the other, the first question to answer is whether the development, itself, is appropriate. This question is answered by evaluating the proposed development's impact on the area. The prime factors to consider are the types and amount of development, and where the development will be located.

According to LURC's Comprehensive Land Use Plan, development in the jurisdiction has "provided jobs, housing and improved services and facilities for the residents of the jurisdiction. Some development has also supported or enhanced the jurisdiction's principal values."¹⁰ In particular, development is publicly beneficial when it supports existing industries, such as forest management, recreation, and eco-tourism.¹¹ New year-round and seasonal housing units are also of significant benefit to local communities¹², and experts in sustainable tourism and resort development recognize that seasonal residences are often needed to make such facilities function economically. These types of development – seasonal and year-round homes, and well-planned resort and tourist destination facilities – are well suited for the Moosehead Lake region, which depends more and more on a nature-based recreation economy for its survival. Part IX of the Plan provides an excellent history of the area, and underscores the appropriateness of residential and resort development as being in keeping with the traditional character of the region.

The levels of the proposed development also must be appropriate for the area in which the development is proposed. This can be viewed both in terms of what level of development might be expected in the Plan Area absent a concept plan, and by looking at the historical rate of development of the Area. With respect to both of these considerations, it is important to note that previous concept plans approved by the Commission have allowed landowners to gain a level, rate, and/or concentration of development that might not be permissible without a Concept Plan, because that development is balanced by conservation measures that would not otherwise be required. The applicant benefits from the additional increment, rate, and/or location of development achieved, and LURC and the public benefit from the ability to steer development to more suitable locations, from the predictability that accompanies long-term planning, and from the required conservation balance.

Absent a concept plan, development can still occur in the Plan Area. This can be achieved through a variety of more traditional means, from level 2 subdivisions, to adjacent rezonings, to unregulated and exempt lot divisions. It is not easy, however, to estimate definitively, the amount of development that might occur without a concept plan, and there is no agreed upon protocol for undertaking such an analysis.

¹⁰ CLUP Appendix C, page C-4.

¹¹ CLUP Chapter 4, page 118.

¹² CLUP Chapter 4, page 118.

That being so, a variety of recent studies¹³ have analyzed Plum Creek's and other landowners' ability to create lots under existing regulations and/or the amount of development that could reasonably be expected absent a concept plan. These studies, which each use a different methodology, have estimated that between 447 to over 1,000 new lots could be created in the Plan Area without any requirement to provide permanent conservation as a balance (other than open space requirements in clustered subdivisions).

The March 2006 study by The Open Space Institute, provides a range of plausible future Plum Creek development in the Plan Area that could occur without a concept plan. The study's draft findings estimate that Plum Creek could create between 447 and 800 new residential lots in the Plan Area over the next thirty-year (30 years is the term of the Plan) with little or no permanent conservation.

Plum Creek's Concept Plan proposes levels of development comparable to each of these studies, yet with substantially greater conservation balance. This balance requirement is a unique aspect of a concept plan, and results in significant permanent conservation that would not be achievable under traditional development, or through a prospective zoning process.

While estimates will vary as to the amount and type of development that might reasonably occur in the Plan Area without a concept plan, it is possible to determine the precise level of development that has occurred in the past. This historical rate of development is useful in evaluating whether the proposed amount of development is in keeping with traditional growth patterns.

Within the 29 townships that encompass and include the Plan Area, Plum Creek owns 421,000 acres (70 percent), with the balance being private land (18 percent), public land (6 percent), and non-profit/conservation land (6 percent). On the private lands not owned by Plum Creek, there are currently 1,508 houses, 570 of which have been built in the last 30 years. This current level of development, on 18% of the land in these 29 townships, is one and a half times the amount of development proposed by the Plan. Thus, if the Plan is fully implemented, and no new lots were created outside the Plan Area in these townships, there would still be 50% more development outside the Plan Area than inside. On a lot-per-acre basis, Plum Creek is proposing less than one-fifth the development density that exists on the 108,500 acres of private land in the 29 townships that encompass the Plan Area (two-fifths the development density that occurred in those townships during the previous 30 years).

Applying this historical analysis to the rim of townships that surround the Plan Area reveals a similar comparison. In those townships, there were 1,553 new lots created between

¹³ These studies are: (i) "Baseline Development Scenario for the Plum Creek Moosehead Project Lands", March 2006 (draft), The Open Space Institute [which provides a potential buildout scenario in the Plan Area based on current zoning and using various development methods, including level 2 subdivisions, adjacent rezonings, and unregulated lot divisions]; (ii) "Build-out Comparison Under Current Regulations", The Plum Creek Rezoning Proposal Infrastructure and Community Impact Analysis, April 2006, Eastern Maine Development Corporation [which looked at a 30 year buildout based only on unregulated lot divisions]; and (iii) "Development Baseline Evaluation Prepared by LURC Staff for Plum Creek's Proposed Concept Plan in Moosehead Lake Area", February, 2005, Land Use Regulation Commission [which assessed the carrying capacity of shorefront areas under LURC's Lake Management Program Guidelines and without consideration of site conditions, adjacency, or other zoning].

1985 and 2004 and 1,106 new building permits issued in that same twenty-year period. Not only is the development proposed by the Plan below these historical growth rates, but the Plan will also cap the total number of new residential lots at 975, while there will undoubtedly be additional growth outside of the Plan Area.

While these future development scenarios and historical growth rates indicate that the number of new lots proposed by the Concept Plan are appropriate for the Plan Area, the locations of these lots is of crucial importance. Just as properly sited development is vital to the region's economy and long-term survival, improperly sited development can, incrementally, have adverse effects on the character and natural resources of the area.

LURC has long recognized the benefits of well-sited development in the unorganized territories, and has determined that "the principal development issue is not the amount of development taking place in the jurisdiction, but rather where it is located."¹⁴ It is the Commission's position that development is best located proximate to settled areas.¹⁵

In response to this, as well as to comments made at the four scoping sessions conducted by LURC staff in August 2005, the Plan's shoreland, backland, and resort planning envelopes have been sited to avoid impinging on the more remote areas of the region. Instead, these planning envelopes (the only areas in which development can occur) are located near existing development, along major public roadways, on management class 3 lakes, and/or in areas otherwise suitable for expansion. No development is proposed on any of the outlying ponds, all of which will be permanently preserved upon approval of the Plan.

The majority of the Plan's proposed residential development is within a 5 to 15-minute drive from Greenville, Rockwood, or Jackman, or within a five-mile radius of Kokadjo or existing lots in Big W Township. Most of the proposed residential planning envelopes are proximate to the Route 6/15 corridor or the well-traveled Lily Bay Road. The limited number of lots proposed for Indian Pond and Long Pond, both Class 3 lakes considered suitable for development, are near existing development. The proposed resort areas are located adjacent to existing resort development, as in the case of Moose Mountain, or in an area highly suitable for a smaller-scale lodge, as in the case of Lily Bay.

While the conservation measures of the Plan (discussed below) are intended to have maximum positive effect, the development proposed by the Plan is designed to have minimal adverse impact on the natural environment and remote character of the region. In addition to carefully siting these potential development areas in appropriate locations, and capping new development at appropriate levels, the Plan further minimizes the impact of the proposed development through strict siting and design guidelines. These guidelines limit the number and visual impact of new residential units and resort facilities, and mandate increased open space requirements. The result is that the proposed development should have very little adverse impact on the natural resources, scenic quality, or traditional character of the region.

¹⁴ CLUP Chapter 4, page 125.

¹⁵ CLUP Chapter 5, page 140.

To balance this reasonable level of appropriately located development, Plum Creek will implement the largest permanent conservation package ever proposed under LURC's regulations – forever protecting more than 17 times the amount of land area than could possibly be developed under the Concept Plan.

This unprecedented conservation-balance package includes: (i) permanent protection of the entire shorelines of 54 pristine ponds (over 5,400 acres and 384,000 feet – or 73 miles – of shoreline), (ii) permanent protection of the undeveloped shorelines of the 7 lakes and ponds on which limited development is proposed (a minimum of 4,289 acres and approximately 374,000 feet – or 71 miles – of shoreline), (iii) permanent conservation of more than 61,000 acres – nearly 100 square miles - of largely unfragmented forestland, and (iv) permanent deed restrictions on all residential lots limiting clearing, lighting, noise, building height and materials in order to reduce visual and environmental impact.

In addition, prohibitive zoning will strip away currently-existing residential development rights over the entire Plan Area, outside the delineated shoreland envelopes, backland envelopes, and resort envelopes. In addition, much of the areas within these envelopes, will ultimately be conserved as open space. Of the 421,000-acre Plan Area, only 11,000 acres – 2.64% - is available for development, and only approximately 1% ultimately can be developed.

Strategic design and placement of these conservation measures further enhances the true impact of the conservation proposed by the Plan. Development pressure in the Moosehead Lake region is greatest on the shorefronts of the lakes and ponds that pepper the area. On 69 of the 76 lakes and ponds in the Plan Area, the Plan will forever prohibit development on all of Plum Creek's ownership. The impact of this protection is magnified by the fact that Plum Creek owns 100% of the shoreline of 59 of those lakes and ponds, thereby ensuring that no new development will ever occur anywhere on those waterbodies. Of the remaining 10 lakes and ponds on which no development is proposed, Plum Creek's ownership equals almost half of the total shorelines, thus preserving the remote character even if other landowners choose to develop their ownerships. On the seven lakes and ponds on which Plum Creek proposes limited development, the Plan will permanently protect a minimum of 72% of the total combined shoreline in Plum Creek's ownership. Overall, 88% of the shoreline owned by Plum Creek will be permanently protected by conservation easements. Of the remaining 20%, no less than 30% will be dedicated as open space in perpetuity.

In addition to permanent protection on the shorefronts of these lakes and ponds, the Plan also proposes a landscape-scale conservation easement – unprecedented in concept planning - on more than 61,000 acres of forestland and mountains east of Moosehead Lake. This proposed easement is larger than all of Maine's state parks (excluding Baxter), combined, and is one and a half times the size of the famed Nahmakanta Reserve, Maine's largest public reserved land.

This vast easement will forever preserve this relatively remote area of the Moosehead Lake region that has been identified by the State and conservation groups as being of high conservation priority. It will also amplify the conservation effect of neighboring conservation areas. By strategically locating this easement to connect with the northerly boundary of the Appalachian Mountain Club's Katahdin Ironworks tract and proximate to the southerly

boundary of the Nahmakanta Reserve, an immense protected area will be created, stretching from the Katahdin Ironworks parcel, through the Plan's landscape-scale easement and the Nahmakanta Reserve, and into Baxter State Park – resulting in an overall conservation area of well over 300,000 acres of remote forestland and wildlife habitat.

In addition to this permanent conservation, implementation of the Plan will also eliminate currently-existing residential development rights throughout the Plan Area. Under current regulations, houses can be constructed virtually anywhere within the 421,000-acre Plan Area. The Plan proposes to limit this development potential to just over 11,000 acres, of which only 4,200 acres ultimately could be developed, which is less than 1% of the 421,000 acre Plan Area. Strict limits on the number, type, and designs of new residences constructed within this acreage further diminish the potential impact of the development, and add to the conservation measures of the Plan.

In terms of balance between the high impact conservation measures and the low impact development proposed by the Plan, the following comparisons may be made (in addition to the shoreline percentages discussed above):

- Seven times more acreage would be placed in permanent conservation than would be rezoned for development;
- Seventeen times more acreage would be placed in permanent conservation than actually would be impacted by the development allowed under the Plan;
- Seventy-four acres will be placed in permanent conservation easement for every one lot proposed by the Plan;
- There are more than 430 acres of undeveloped land per residential lot; and
- The proposed development density is less than one and a half lots per square mile.

Because there is nothing in LURC's statute or regulations to define what constitutes a reasonable and publicly beneficial balance between development and conservation, a comparison of the balance proposed by the present Plan to the balance approved by the Commission in the four previous concept plans is an indicator of whether this Plan offers a balance that meets that standard. The Plan's balancing conservation measures compare favorably to the conservation measures of each of the previously approved concept plans.

While there are differences between the four previously approved plans – Attean Lake, First Roach Pond, Brassua Lake, and Whetstone, Foss and Hilton Ponds – and the proposed Plum Creek Plan (most notable of which is that this Plan includes a significantly larger land area), there are also many similarities. Most importantly, all five concept plans secure reasonable additional development rights for the landowner, balanced by permanent and long-term conservation for the public, thus helping to establish a general precedent for the level of appropriate development and the amount of balance that should reasonably be expected within a concept plan. This precedent is especially illustrative in light of the lack of guidance contained in LURC's regulations as to how this standard should be measured – thereby providing rations of conservation to development that have been deemed reasonable and publicly beneficial by the Commission.

Plum Creek's Plan proposes less development per acre than any previous concept plan. The overall development density of the current proposal is .002 lots per acre. By comparison, the density of the Attean Plan is .005 lots per acre (twice the density of the current Plan); the density of the First Roach Pond Plan is .06 lots per acre (26 times the density of the current Plan); the density of the Brassua Plan is .01 lots per acre (nearly 5 times the density of the current Plan); and the density of the Whetstone/Foss/Hilton Plan is .003 lots per acre (almost one and a half times the density of the current Plan).

While, on the one hand, the overall density of the development proposed by the current Plan is lower than any other approved concept plan, on the other hand, the amount of permanent conservation per new lot is much higher than in any earlier plan – nearly 74 acres of permanent conservation per proposed lot. In contrast, the Attean Plan created 51 acres of permanent conservation per new lot (about two thirds of the amount proposed by the current Plan); the First Roach Pond Plan created 13 acres of permanent conservation per new lot (about one fifth of the amount proposed by the current Plan); the Brassua Lake Plan created 19 acres of permanent conservation per new lot (one fourth of the amount proposed by the current Plan); and the Whetstone/Foss/Hilton Plan created 28 acres of permanent conservation per new lot (just over one third of the amount proposed by the current Plan).

Looking at the relative amount of shoreland conserved by each of these previously approved plans reveals similar comparisons. While the Plum Creek Concept Plan ultimately will conserve 88% of all shoreline with the Plan Area, the Attean Plan conserved 39% of total shoreline (45% of the amount proposed by the Plum Creek Plan), the First Roach Plan conserved 75% of total shoreline (86% of the amount proposed the Plum Creek Plan), the Brassua Plan conserved 70% of total shoreline (80% of the amount proposed by the Plum Creek Plan), and the Whetstone/Foss/Hilton Plan conserved 81% of total shoreline (94% of the amount proposed by the Plum Creek Plan). As these figures demonstrate, no other concept plan approved by the Commission has devoted as large a percentage of the plan's total shoreline to permanent conservation.

There are any number of other ways to compare the Plum Creek Concept Plan with previously approved concept plans. In each instance, however, the comparison shows that the permanent conservation measures guaranteed by the Plum Creek Plan provides a balance that is favorable compared to previously approved concept plans. However, these comparisons do not take into account the total impact of the proposed development – where it is located, and what its ultimate effects will be – versus the real public and environmental benefits of the proposed conservation. For example, both the Attean and Whetstone/Foss/Hilton Plans proposed development for more remote areas, while the First Roach and Brassua plans were implemented closer to existing development and on Management Class 3 lakes. As such, it is not surprising that the conservation measures of the Attean and Whetstone/Foss/Hilton Plans exceeded those of the First Roach and Brassua Plans.

The current Plan proposal is similar to the First Roach and Brassua Plans, in that the current Plan is proposing development in parts of the Plan Area that are proximate to existing communities and infrastructure, and away from more remote sections, but also similar to the Attean and Whetstone/Foss/Hilton Plans in the level of conservation provided. Yet the current

proposal also includes substantial anticipated economic benefits for local communities of a scale far larger than earlier plans. Further, the sheer size of the landscape-scale 61,000 acre conservation easement, and the large number of lakes and ponds on which the entire shorelines will be forever protected, represents an historic offering for large-scale habitat protection not proposed in previous plans, and not achievable through traditional development or a prospective zoning process.

Prospective zoning is a powerful tool that gives LURC the opportunity to identify “areas within a community or region that are most appropriate for additional growth based on existing development patterns, natural resource constraints, and future planning considerations. These areas are then zoned as development districts, and future growth is facilitated in these zones.”¹⁶ In this way, the prospective zoning process is very similar to the development goals of the concept plan process. A comparison of the Prospective Zoning Plan adopted by LURC for the Rangeley Lakes Region to the Plum Creek Concept Plan shows the Concept’s Plan’s comparative conservation advantages.

The Prospective Zoning Plan for the Rangeley Lakes Region (the only approved prospective zoning plan to date) covers an area 60 percent the size of the Plum Creek Plan Area, of which about 8,400 acres are zoned for development. The Rangeley plan projects that 650 lots will be needed over the next 20 years, but does not contain a cap, and the area rezoned for development well exceeds the amount necessary to accommodate 650 lots. The Rangeley Plan also contemplates that, at the end of the 20-year period, a new plan will be created to accommodate future growth.

While both plans have an identical rate of growth (650 lots over a 20-year period equates to 975 lots over a 30-year period), the Plum Creek Plan allocates a smaller percentage (less than 1% compared to 3.3%) of the Plan Area for development and puts a 30-year, 975-lot cap on development. The Plum Creek Plan also has a much lower development density than the Rangeley Plan (about one and a half lots per square mile in the Plum Creek Plan compared with nine lots per square mile in the Rangeley Plan).

The most significant difference between the two plans (and between any prospective zoning plan and any concept plan) is that a prospective zoning plan does not include any permanent conservation, as this is not possible under the prospective zoning process. Therefore, while prospective zoning and concept planning both have the ability to effectively guide development to appropriate locations and to limit development to reasonable amounts, only concept planning has the ability to secure permanent protection.

In summary, by any of the measures described above, the Plum Creek Plan amply meets the standard of striking a “reasonable and publicly beneficial balance between appropriate development and long-term conservation of resources”.

¹⁶ CLUP Chapter 4, page 126.

G. 10.23,H.6.g. – conservation measures are permanent or long-term

10.23,H,6,g. In the case of concept plans, conservation measures apply in perpetuity, except where it is demonstrated by clear and convincing evidence that other alternative conservation measures fully provide for long-term protection or conservation.

A range of conservation initiatives is proposed in the Conservation Balance and the Conservation Framework provided in connection with the Plan.

The Plan proposes 72,000 acres of permanent conservation easements, including shoreland easements and a 61,000 acre landscape scale conservation easement, and 144 miles of permanent trail easements within the Plan Area. In addition, but not as part of the required balance, approval of the Plan will provide the opportunity through the Conservation Framework to secure another 269,000 acre conservation easement, a 27,000 acre conservation fee sale, both within the Plan Area and a 45,000 acre fee sale outside the Plan Area for Permanent Conservation. When the Plan is fully implemented, 205 miles of permanent shorefront conservation will be in place and 76 lakes and ponds will be significantly protected in perpetuity. The measures proposed are:

- ***Moosehead-Roach River Easement – 61,000 acres, 11 miles of shorefrontage.*** This conservation easement includes five pristine ponds and stretches from Days Academy Grant on Moosehead Lake eastwards almost to the Nahmakanta Public Reserve Unit; it includes most of Frenchtown as well as Lily Bay and Number Four Mountains. The easement will be granted at the time of Plan approval. The easement terms will prohibit development, allow timber management to continue, and guarantee traditional public access. Sustainable forest management will be required under the terms of the easement. The holder will be the Forest Society of Maine.
- ***Easements on Pristine Ponds - 5,400 acres, 73 miles of shorefrontage.*** There are 54 pristine ponds within the Plan Area (excluding those in the Moosehead-Roach River Easement and Roach Ponds areas). All will be permanently protected under the terms of the Plan. Any pond that straddles the edge of the Plan Area, and which is wholly owned by Plum Creek, will be protected in its entirety. The easement terms will prohibit development and guarantee traditional public access. These easements will be held by the Forest Society of Maine and will be granted immediately upon LURC approval of the Plan.
- ***Moose River Easement – 623 acres, 10 miles of river frontage (5 miles on two shores).*** This easement will be put in place when all the shoreland subdivisions on Brassua Lake are approved. The Forest Society of Maine will hold the easement.
- ***Easements on Developed Lakes and Ponds – 4,300 acres, 71 miles of shorefrontage.*** The easements on the developed lakes and ponds (Moosehead and Brassua Lakes, and Long, Burnham, Prong, Indian, and Upper Wilson Ponds) will cover 72% of Plum Creek's ownership on these water bodies. The easements guarantee permanently protected open space and public access. They will be phased in as shorefront subdivisions are approved, and will be held by the Forest Society of Maine. *Note: These numbers do not include over 9 miles of shorefront open space within shorefront envelopes that will be permanently conserved as each subdivision is approved.*

- ***Peak-to-Peak Hiking Trail – 58 miles.*** This trail extends from Rockwood to Nahmakanta. It can be also be used, in part, by bicyclists. The easement is to be held by the State Bureau of Parks & Lands and will take effect immediately upon Plan approval.
- ***Permanent ITS Snowmobile Trail– 74 miles.*** This permanent trail guarantees access to snowmobilers. The easement will be conveyed to the State Bureau of Parks & Lands and will take effect immediately upon Plan approval.
- ***Mahoosucs to Moosehead Trail – 12 miles.*** This trail is part of the trail system being planned by Maine Huts and Trails that will run from the Mahoosuc Mountain Range near Bethel to Moosehead Lake. The segment on Plum Creek land is 12 miles. The trail is for cross-country skiing, hiking, and bicycling. The easement will be conveyed to the Western Mountains Foundation.
- ***Moosehead Legacy Easement – 269,000 acres, part of the Conservation Framework.*** Upon approval of the Plan, The Nature Conservancy, or other qualified conservation interest, will have a five-year option to buy a conservation easement that will prohibit all development in this area and guarantee traditional public access while allowing timber management to continue. Sustainable forest management will still be allowed under the terms of the easement. This area does not include any shorefrontage, as this is accounted for under the other Plan elements.
- ***Roach Ponds Acquisition – 27,000 acres, part of the Conservation Frameworks, 39 miles of shorefrontage.*** This block of land adjacent to the 100 Mile Wilderness and AMC-owned land is being offered for sale to The Nature Conservancy with ultimate ownership by the State or qualified conservation organization. It includes 10 pristine ponds. On approval of the Plan, The Nature Conservancy, or another qualified conservation entity, will have a five year option to purchase the property.
- ***Number Five Bog – 45,000 acres, part of the Conservation Framework.*** Upon approval of the Plan, The Nature Conservancy, or another qualified conservation entity, will have a five-year option to purchase these lands south of Attean Township outside the Plan Area. Should the acquisition be completed, it would protect a high-value peat bog and lands adjacent to the popular canoe route on the Moose River called The Bow Trip.
- ***30-Year No Development Buffer – 25,000 acres.*** The “30-Year No Development Buffer” is essentially all the land that is not covered by easements, options, or planning envelopes. Plum Creek is not proposing any development in these areas for the life of the Plan. This land affords flexibility for future needs of the area.
- ***Open Space – 6,800 acres.*** The open space is undeveloped land that is within the residential and resort planning envelopes. The numbers are estimates.